



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

**REHEARING
DECISION**

FCP/169985

PRELIMINARY RECITALS

Pursuant to a petition filed November 7, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the My Choice Family Care ["My Choice"] in regard to Medical Assistance ["MA"], a Hearing was scheduled for December 29, 2015. Prior to Hearing being held petitioner withdrew her request for a Hearing. Accordingly, a *Decision* dated January 5, 2016 was issued dismissing this matter. On January 25, 2016 the Division of Hearings and Appeals ["DHA"] received a request for a rehearing from petitioner. By a *Rehearing Request Order* dated January 25, 2016 petitioner's request for a rehearing was granted. A rehearing was held from Madison, Wisconsin via telephone on February 9, 2016.

The issue for determination is whether the DHA has jurisdiction in this MA Family Care Program ["FCP"] matter.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

BY: [REDACTED] Case Manager
MY Choice Family Care
901 N 9th St
Milwaukee, WI 53233

ADMINISTRATIVE LAW JUDGE:
Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (94 years old) is a resident of Milwaukee County, Wisconsin.
2. Petitioner is an FCP recipient.
3. Petitioner received a letter notice from the County dated September 1, 2015 entitled *Notice of Action*; that September 1, 2015 notice informed petitioner that her transportation would be provided through a transportation company rather than through the caregiver.; that September 1, 2015 notice also informed petitioner of her appeal rights, including the 45-day time limit for filing an appeal.
4. Petitioner requested a Hearing by a *Request For Fair Hearing* from dated October 27, 2015 and received by DHA on November 9, 2015 via U.S. Mail postmarked November 7, 2015.

DISCUSSION

DHA can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if an appeal is untimely.

An appeal concerning FCP is untimely if it is not received by DHA within 45 days after receipt of the notice of action. Receipt of notice is presumed within 5 days of the date the notice was mailed. A Hearing request is considered filed on the date of actual receipt by DHA. Wis. Stat. § 46.287(2)(a)1. (2013-14); Wis. Admin. Code § DHS 10.55(3) (November 2015). A Hearing request that is not received within the 45-day time period must be dismissed for lack of jurisdiction. Wis. Admin. Code § HA 3.05(4)(e) (February 2013).

In this case, the action being appealed is contained in the September 1, 2015 *Notice of Action*. Petitioner's request for a Hearing was not filed until November 7, 2015. This is well outside of the allowable 45 days. Therefore, petitioner's appeal is untimely and no jurisdiction exists for DHA to consider the merits of petitioner's appeal.

Petitioner states that her request for a Hearing was late because of a review by the Wisconsin Department of Health Services ["DHS"] and because of a request for documentation that was never received. These circumstances do not create jurisdiction where none otherwise exists. Further, DHS reviews are done concurrently with the DHA appeals process. See, Wis. Admin. Code § DHS 10.55(4)(b) (November 2015).

CONCLUSIONS OF LAW

For the reasons discussed above, DHA does not have jurisdiction in this FCP matter.

NOW, THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby DISMISSED.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 24th day of February, 2016

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 24, 2016.

MY Choice Family Care
Office of Family Care Expansion
Health Care Access and Accountability